



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

February 13, 1997

James W Johnson

Dear Mr. Johnson:

In your letter dated January 21, 1997 you asked that we clarify the flight crewmembers' responsibility for ensuring that the flight attendants assigned to their flight are in compliance with Section 121.467 of the Federal Aviation Regulations.

The pilot-in-command ("PIC") of the specific flight cannot be charged with a violation of Section 121.467 itself. However, a PIC is responsible for the overall safety of his flight, including passengers, crewmembers, cargo and the aircraft, and for making sure the flight is in compliance with all applicable regulations. (See Sections 91.13, 121.533(d), 121.535(d)(f), and 121.537(d)(f).) Thus, the PIC cannot initiate an aircraft operation if he knows that certain safety regulations, including flight attendant duty and rest rules, would be violated.

The language in two NTSB decisions state factors to consider when determining the extent of a PIC's responsibilities. In one NTSB decision the Board held:

As a general rule, the pilot-in-command is responsible for the overall safe operation of the aircraft. If, however, a particular task is the responsibility of another, if the PIC has no independent obligation (e.g., based on operating procedures or manuals) or ability to ascertain the information, and if the captain has no reason to question the other's performance, then and only then will no violation be found.

Administrator v. Takacs, NTSB Order No. EA-3501.

The NTSB stated in another decision that while

...the responsibility for safe operation of an aircraft rests with the pilot-in-command, we have in the past recognized that the complexity of air travel and technology requires that duties be delegated and not individually confirmed by the PIC. Administrator v. Lusk, 2 NTSB 480, 482 (1973) (an airline captain cannot be required personally to verify every representation made to him by any member of the flight or ground crews). As a result, we have declined to hold the PIC culpable for FAR violations caused by the action (or inaction) of another, when the PIC had no reason or basis to look behind or to question either that other individual's representation or performance of assigned duties.

Administrator v. Bass, NTSB Order No. EA-3507 (1992).

A flight attendant is in the best position to know how many hours he has been on duty. If a flight attendant knows he will exceed duty time limitations before the completion of all of his assigned flights for the day, he should communicate that fact to both the carrier's management and the PIC. In fact, the carrier has a regulatory duty to keep track of each flight attendant's duty time and rest time. If the flight attendant becomes aware of the problem before a flight and notifies the PIC, it may be the duty of the PIC to pass on this communication to the air carrier by radio. Once a PIC is aware that any of the flight attendants are out of compliance with Section 121.467, in view of the scheduled flight time remaining, the PIC has a responsibility to not take off unless the aircraft and crew are in compliance with all regulations.

While a PIC is not responsible for keeping track of the duty and rest time of his flight attendants, he does have a responsibility to inquire further, once notice of a potential violation is given. In one case the PIC was given a 20-day suspension for not inquiring further when his engineer indicated that the fuel gauges may not be reflecting an accurate reading and which resulted in the plane landing with only 450 pounds of fuel remaining. (Administrator v. Gaugles, SE-4910 (1981)).

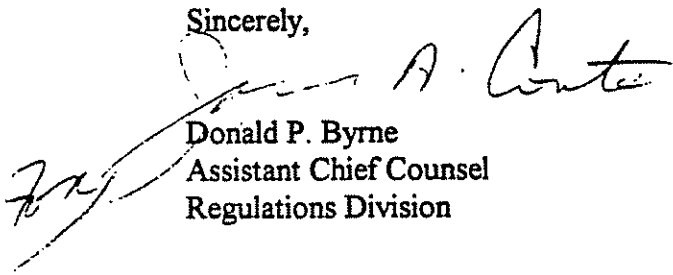
Under some circumstances, a PIC's responsibility to ensure compliance with all regulations may extend beyond just verbal notice from a flight attendant. If the flight attendant gives physical indications of being excessively tired, the PIC could also have a duty to inquire further. A PIC's certificate was revoked for operating his flight in a careless or reckless manner because it was found that the PIC had a duty to notice physical manifestations of crewmembers which might indicate they were unfit to carry out their duties. (Johnson v. NTSB, 979 F.2d 618 (7th Cir. 1992)). In that case the PIC was held to have violated Section 91.13 because he allowed his copilot to take the flight and operate the controls of the aircraft, in spite of the copilot's obvious intoxication. While it was the copilot who was "unfit" under alcohol consumption regulations, the PIC was still held responsible because he operated the flight knowing a crewmember was in violation of these regulations. As seen in Johnson, the Agency will hold a PIC responsible under Section 91.13 if the PIC has information that a crewmember is not conforming to a safety regulation. The flight attendant duty and rest rules are important safety regulations. A

PIC can be held responsible under Section 91.13 for knowingly allowing crewmembers, who are violating safety regulations, to serve on a flight.

Thus, once a PIC is aware of a flight attendant's noncompliance with Section 121.467, or the possibility of noncompliance with this section, he does have a responsibility to be proactive and make sure that his flight is in compliance with all applicable regulations. If he fails to do so, he could be charged under one of the applicable regulations cited above.

This interpretation was prepared by Terry Turner, reviewed by Joseph Conte, Manager of the Operations Law Branch and concurred in by the Air Transportation Division of Flight Standards Service. Thank you for your inquiry.

Sincerely,



Donald P. Byrne
Assistant Chief Counsel
Regulations Division